

The Daily Review
Saturday, October 8, 1988

Mending fences covered by law

Dear Mr. Duman: I have some questions regarding fences. The fences between my neighbor and me are in bad shape.

By that I mean whole sections have fallen over and are now held up by rope or heavy cord. Posts are rotten. Boards are split, broken, and even missing. One side of the fence now leans at such an angle into my yard that I cannot walk along the cement stepping stones I have near the fence.

I would like to replace the fence. I have obtained estimates from three companies and have decided on the one with the lowest estimate to do the work. My problem is with my neighbor.

If I am unable to obtain satisfactory contribution from the neighbor, what remedies are available to me?

M.P., San Ramon

Dear M.P.: Section 841 of the California Civil Code discusses the duties of adjoining landowners with respect to the maintenance of "division fences" which may be called "community fences," "boundary" or "partition" fences. A fence that is located entirely on the property of one landowner is NOT a "division" fence.

With regard to "division" fences, Section 821 states: "Coterminous owners are mutually

Real estate lawyer

by Fred M. Duman



bound equally to maintain: 1) The boundaries and monuments between them; 2) The fences between them, unless one of them chooses to let his land lie without fencing; in which case, if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any 'division fence' made by the alter."

Therefore, landowners are mutually obliged to contribute equally to the maintenance of "division" fences between them unless one of the land owners is not completely fenced in.

Note, however, that the courts will not impose aesthetic standards on the nature of the construction of the fence unless there is a contract between the parties, a covenant of a homeowners asso-

ciation or some law or regulation that provides for aesthetic control.

If a landowner builds a fence which rests squarely upon the boundary line separating two parcels of adjoining property and one of the adjoining landowners subsequently encloses his property utilizing the original fence built by his neighbor; he must reimburse the neighbor for a just portion of the value of the fence on the common boundary (at time of construction) and must pay his share of the maintenance thereafter.

An adjacent owner may obtain a contribution from his neighbor for the erection and maintenance of a common "boundary" fence ("division" fence) only if the neighbor's land is completely fenced in.

The cost of the erection and maintenance of a fence standing fully upon the property of an adjacent landowner, is the full responsibility of the owner of the land upon which the fence stands unless there is an agreement to do otherwise.

Aside from any duties to repair and maintain a "division" fence, there is also a duty to avoid negligent construction and negligent maintenance of a fence so that it will not cause injury to anyone.

The manner erection and maintenance of a fence, whether or not a "division fence" may also be controlled by contract, law covenants of a homeowners' association or by local planning department's requirements.

Readers may address their questions to Fred M. Duman, P.O. Box 2792, Castro Valley, Calif., 94546. Duman will answer those of general interest in his column. He reserves the right to edit the letters for brevity and clarity.

Readers are cautioned that the accuracy of information other than that which appears in the answers is not guaranteed.

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Note:

Anodized gray chain-link fencing that is visible to the public is discouraged. Barbed, razor-wire, or similar fencing is prohibited.

Minimum side yard 5' or 10% of lot width at the building line, whichever is greater, up to maximum 10'.

20' front yard required.

Maximum height of fence within required 20' front yard is 4'.
(With the exception of numbers 102 through 720 B Street, where special height and material requirements apply.)

Note:

Prior to constructing any fence or wall within this corner area, contact the City's Transportation Development Division at 510-583-4700 for specific information about obstructions to visibility at intersections.

Maximum height of fence along side and rear lot lines is 6'.

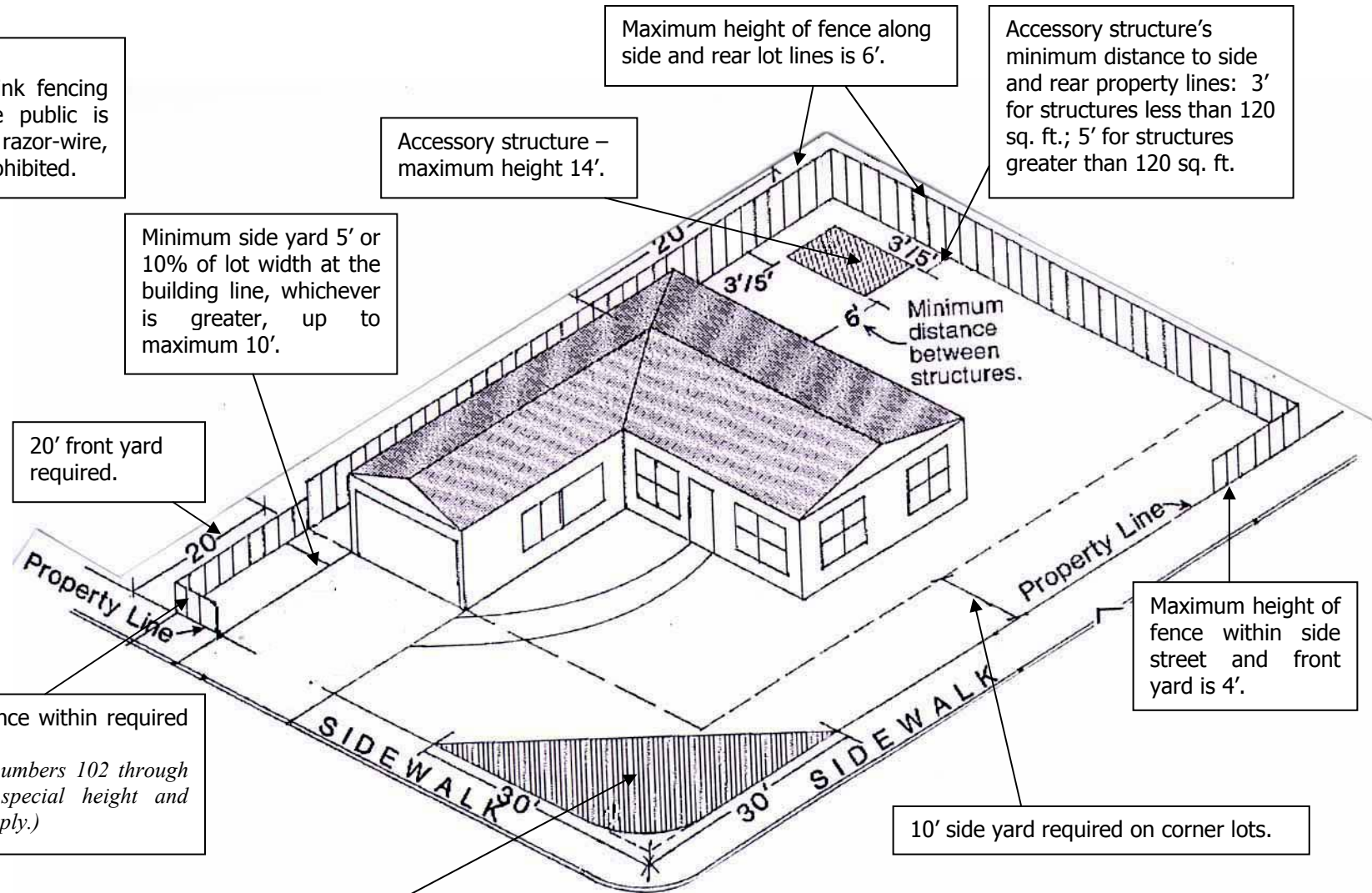
Accessory structure – maximum height 14'.

Accessory structure's minimum distance to side and rear property lines: 3' for structures less than 120 sq. ft.; 5' for structures greater than 120 sq. ft.

Minimum distance between structures.

Maximum height of fence within side street and front yard is 4'.

10' side yard required on corner lots.



CITY OF HAYWARD
Fence, Yard, and Accessory
Structure Information

SINGLE-FAMILY RESIDENTIAL DISTRICT

Minimum Lot Size – 5,000 square feet

Maximum Coverage – 40%

effective 7/25/2000